No.

IN THE QUEEN'S BENCH.

IN APPEAL.

JAMES HAGEN,
Appellant.

v.

RUGGLES WRIGHT,
Respondent.

APPELLANT'S CASE.

PROVINCE
LOWER

PROVINCE OF CANADA, }
LOWER CANADA. }

In the Queen's Bench.

APPEAL SIDE.

JAMES HAGAN,
Appellant.

AND

RUGGLES WRIGHT,
Respondent.

APPELLANT'S CASE.

THE JUDGMENT appealed from was rendered by the Circuit Court in the District of Ottawa, on the first day of February, one thousand eight hundred and sixty, condemning the Appellant to pay the Respondent fifty pounds currency, interest and costs.

The Respondent's claim to the said sum of money is set forth in his declaration substantially as follows:

He declares that by deed of assignment, of the twenty-sixth day of March, one thousand eight hundred and fifty-one, the Respondent Ruggles Wright transferred all his property, real and personal, to Messrs. James Gilmour, Hugh Allen, and Alexander Workman, in trust, for the benefit of his creditors.

The Trustees aforesaid by Alexander Workman their Agent and Attorney, sold to the Appellant by deed of sale of the tenth day of March, one thousand eight hundred and fifty-four, a portion of the real property aforesaid assigned to them for the payment of the Respondent's creditors, for one hundred and seventy-five pounds currency, payable by the said deed, to Alexander Workman, one of the said Trustees, in three years.

The Trustees performed the objects for which the aforesaid trust was created, and paid the Respondent's creditors out of the proceeds of the said estate.

From the statement of facts the Respondent in his declaration claims a right to have from the Appellant the sum of fifty pounds aforesaid and interest, being the balance unpaid of the said sum of one hundred and seventy-five pounds payable by the said deed of the tenth day of March, one thousand eight hundred and fifty-four, to the said Alexander Workman; and this interest is taken upon the ground, set forth in the said declaration, that upon payment of the debts and other charges against the Respondent, by the said Trustees, the said Trust Property vested in operation of law became effective, and the surplus of the said estate remaining undisposed of became at once vested in the Respondent.

In a second count the said Respondent in his declaration says, that the creditors aforesaid being paid and the said Trustees having refused to retrocede to him the surplus of the said estate remaining undisposed of, he obtained against them a judgment of the Superior Court, on the seventh day of June, one thousand eight hundred and fifty-seven, by which they, the said Trustees, were ordered within three days after the service thereof upon them, to reconvey and transfer to the Respondent, before Notaries, all the real and personal estate, debts, books, accounts, &c., assigned to them by the Respondent in the said Trust Deed, and which remained in their hands undisposed of, and in default thereof it was ordered that the said judgment should operate as such reconveyance and transfer, and that the said Trustees having made default to do as ordered by the said judgment, the Respondent, on the eighth day of September, one thousand eight hundred and fifty-seven, obtained another judgment of the said Court establishing the said default of the Trustees, and declaring that the said judgment of the seventh day of June, one thousand eight hundred and fifty-seven, should operate as a transfer and reconveyance to the Respondent of all the immoveable property conveyed to them as aforesaid by the said Trust Deed and not sold by them.

To this action the Appellant pleaded firstly, a defence *non fondée en fait*, and secondly, a defence in which it was urged:

That the sale of land by the Trustees to the Appellant was made during the existence of the said trust, and the sum or balance due on the same, which is claimed by the Respondent, is payable not to him but to Mr. Alexander Workman.

That the judgments set forth in the Plaintiff's action have no reference whatever to the debt due by the Appellant to the Trustees aforesaid.

That by reference to the said judgments it appears they have reference only to the surplus property, debts, &c. which had been conveyed and assigned by the Respondent to the said Trustees by the said Trust Deed, which are set forth particularly in the schedule of the said deed, and which were not disposed of or sold by the said Trustees, whereas the debt claimed by the Respondent from the Appellant was contracted long after the execution of the said Trust Deed, and is the price of land sold and disposed of by the said Trustees to the Respondent, viz. the Appellant.

The issues being closed the Respondent produced as evidence of his claim firstly, the Trust Deed of the twenty-sixth day of March, one thousand eight hundred and fifty-one,—secondly, the said deed of sale by the said Trustees represented by their Attorney, A. Workman, (whose power of Attorney or authorization from the other Trustees is not however filed or proved) to the Appellant,—thirdly, the said judgment of the Superior Court of the seventh day of June, one thousand eight hundred and fifty-seven,—fourthly, a judgment of the Superior Court of the thirtieth day of September, one thousand eight hundred and fifty-seven,—and fifthly, an admission on the part of the Appellant that the property mentioned in the Plaintiff's declaration sold by the said Trustees to the Appellant, was a part of the property assigned to them by the Respondent, and that the objects for which the said trust was created had been fulfilled.

The Appellant having adduced no evidence the judgment appealed from was rendered in favor of the Respondent on the first day of February, one thousand eight hundred and sixty.

From this statement it appears that the Respondent rests his claim to the debt in question upon two grounds which are obviously inconsistent with each other. In the first place he claims that the Trust Deed became effete by the fulfilment of the objects for which the said trust was created, and as a consequence that the said debt became vested in him by mere operation of law; and in the second place, that the debt in question became vested in him by virtue of the aforesaid judgments of the Superior Court, which operated as a reconveyance of the said debt from the said Trustees to him.

Taking the Respondent's first proposition as founded the said judgments of the Superior Court have absolutely no signification; for then they would order the said Trustees to transfer to the Respondent that which was his already, and of which by hypothesis, they had been divested by mere operation of law. And *vice versa*, the authority of the said judgments of the Superior Court, would destroy the Respondent's first proposition; for they are both evidently founded upon the presumption that the surplus of the said estate not disposed of was still legally vested in the said Trustees.

In regard to the Respondent's first proposition, viz.: That the debt in question became vested in him by mere operation of law upon the fulfilment by the Trustees of the objects for which the said trust was created, and as a portion of the surplus of the said estate not required to pay the Respondent's debts, the Appellant would submit that the said proposition if proved is unfounded in law. It is also inconsistent with the said judgments which the Respondent obtained against the said Trustees, and in direct contradiction with the nature and stipulations of the Trust Deed above referred to. For by the said Deed of Trust the Respondent absolutely conveyed all his property to the said Trustees and all rights legal and equitable thereto became vested in them; and, in consideration thereof, the Trustees agreed that, should the said property conveyed to them be more than sufficient to pay the debts of the Respondent, they would execute such RETRANSFERS and RECONVEYANCES as should be necessary to reinvest the surplus in the Respondent.

The Appellant would further submit that, admitting the legality of the said proposition, it was incumbent on the Respondent to prove that the debt in question formed a part of the said surplus of his estate unsold or undisposed of by the said Trustees for the benefit of his creditors, for this was all he could expect to recover under any circumstances. But of this no proof was adduced; nor was it a matter which could be proved in the said action, but one properly to be determined in action by the Respondent against the said Trustees.

In regard to the Respondent's claim to the debt in question, based upon the said judgment of the Superior Court, the Appellant has only to refer the Court to the copies of the said judgments by which it will appear that they have no reference whatever to the debt claimed by the said Respondent from the Appellant. They refer only to real estate, debts, accounts, &c., which MAY BE in the hands of the said Trustees undisposed of and forming part of the surplus so conveyed to them by the Deed of Trust. Whereas the debt claimed by the Respondent was never conveyed by him to the said Trustees, for it was created after the Deed of Trust, and there is no proof that any such surplus exists or ever did exist.

Under these circumstances, with the documents and proof of record, and in the absence of any proof that the debt claimed by the Respondent formed a part of the said surplus estate undisposed of and not applied by the Trustees, it is difficult to imagine what can be urged in favor of the said judgment in the Respondent's favor.

P. Aylen
Atty for Appellt

PETER AYLEN,
Attorney for Appellant.

JUDGMENT APPEALED FROM.

IN THE CIRCUIT COURT.

The first day of February one thousand eight hundred and sixty, being an enquite day.

PRESENT THE HONORABLE MR. JUSTICE LAFONTAINE.

R. WRIGHT, *Plaintiff,*

vs.

J. HAGAN, *Defendant.*

THIS CAUSE having been inscribed for the adduction of evidence and final hearing on the merits at the same time, and the Court having heard the parties by their respective Counsel, and having seen the admission of the Defendant, examined the proceedings and proof of record, and having deliberated thereon it is considered and adjudged that the Plaintiff do recover from the Defendant James Hagan the sum of fifty pounds current money of the Province of Canada, due and owing from the said Defendant to the said Plaintiff, for balance of the principal and interest remaining unpaid, in virtue of a certain Deed of Sale, bearing date, and executed at Aylmer, on the thirteenth day of March, eighteen hundred and fifty-four, before Maitre R. A. Young, and Colleague, Notaries Public, of a piece or parcel of land, described in the said Deed of Sale, and sold to the said Defendant by Alexander Workman, Esquire, acting for and in behalf of the Trustees of the said Plaintiff, under a certain Deed of Assignment and transfer in trust, bearing date, and executed by the said Plaintiff, before Maitre Easton, and Colleague, at Montreal, on the twenty-sixth day of March, one thousand eight hundred and fifty-one, with interest on the said sum of fifty pounds, from the ninth day of September, last past, date of service of process, until actual payment and costs of suit.

Extract from a Judgment of the Superior Court rendered 27th June, 1857, against the said Trustees in favor of the Respondent.

"AND it is further considered and adjudged that the said Defendants and each of them do within one month "after the service upon them of the present Judgment, make, sign and execute before Notaries, a good and sufficient "deed or deeds transferring and reconveying to the said Plaintiff such portion of the real estate of the said Plaintiff "conveyed to them under the said Trust Deed as hath not been sold by them the said Defendants, and in default of "the said Defendants to make, execute and sign such deed or deeds of transfer and reconveyance, the Court doth "order that the present Judgment shall operate as such transfer and reconveyance, and shall vest in the said Plaintiff "the surplus of the said real and immovable estate remaining in the hands of the said Defendants as such trustees as "the proprietor thereof, and it is also considered and adjudged that the said Defendants do within the delay above "mentioned, deliver over to the said Plaintiff all the personal estate and all bills, books, accounts, and other papers "and assets as may be in their and each of their hands undisposed of and forming part of the surplus so conveyed as "aforesaid to the said Defendants."